

**STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF INSURANCE**

**REQUEST FOR PROPOSALS
FOR
FINANCIAL SOLVENCY/SUPPORT IDENTIFYING
FINANCIALLY TROUBLED INSURANCE
COMPANIES AND INITIATE CORRECTIVE ACTION**

April 1, 2006

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1.0. GENERAL INFORMATION

1.1 Purpose

This Request for Proposals (RFP) is issued by the Louisiana Department of Insurance (herein referred to as the State) for the purpose of providing support to the State in the identification of insurance companies that may be financially troubled and to initiate corrective action to protect the policyholders, claimants, and creditors from financial loss.

1.2 Background

The Office of Financial Solvency examines and monitors the financial condition of all insurers approved to conduct the business of insurance in Louisiana. The type of regulated entity varies and includes Louisiana domiciled (Domestic), out of state (Foreign) and out of the country (Alien) insurers. These companies may operate as life, health, property and casualty, health maintenance organizations, surplus lines, self-insurance funds, vehicle mechanical breakdown companies, and automobile clubs.

An objective of the Office of Financial Solvency is to identify, at the earliest possible stage, insurance companies that may be financially troubled.

1.3 Scope of Services

Attachment I details the scope of services and deliverables or desired results that the State requires of the Contractor .

2.0 ADMINISTRATIVE INFORMATION

2.1 Expected Time Period for Contract

The period of any contract resulting from this RFP is tentatively scheduled to begin on or about July 1, 2006 and to continue through June 30, 2009.

2.2 RFP Coordinator

Requests for copies of the RFP and written questions must be directed to the RFP Coordinator listed below.

This RFP is available in electronic form at www.lds.state.la.us in PDF format or in printed form by submitting a written request to the RFP Coordinator.

Cathy Cutrer
Administrative Manager/Management and Finance
Louisiana Department of Insurance

Mailing Address: P.O. Box 94214
Baton Rouge, Louisiana 70804-9214

Street Address: 1702 North 3rd Street
Baton Rouge, Louisiana 70802

Telephone: (225) 342-2484
FAX: (225) 219-7715
EMAIL: ccutrer@lds.state.la.us

2.3 Proposer Inquiries

The State will consider written proposer inquiries regarding RFP requirements or Scope of Services before the date specified in the Calendar of Events. The State reserves the right to modify the RFP should a change be identified that is in the best interest of the State.

To be considered, written inquiries and requests for clarification of the content of this RFP must be received at the above address or via fax or email by 4:00 p.m. CST on the date specified in the Schedule of Activities. Any and all questions directed to the RFP Coordinator will be deemed to require an official response. Official responses to each of the questions presented by the proposers will be posted by **May 10, 2006** at www.lds.state.la.us.

Only **Cathy Cutrer, Administrative Manager, Management and Finance** has the authority to officially respond to proposer's questions on behalf of the State. Any communications from any other individuals are not binding to the State.

2.4 Calendar of Events

<u>Event</u>	<u>Date</u>
Advertise RFP and mail public announcements	April 1, 2006
Deadline for receiving proposer inquiries	April 20, 2006
Issue responses to proposer inquiries	May 10, 2006
Proposal submission deadline	May 24, 2006

NOTE: The State of Louisiana reserves the right to amend and/or change this schedule of RFP activities, as it deems necessary.

3.0 PROPOSAL INFORMATION

3.1 *Proposal Response Location*

Proposers who are interested in providing consulting services under this RFP should submit a proposal containing the information specified in Section 4.0. The fully completed proposal with original signatures by an authorized representative must be received in hard copy (printed) version by the RFP Coordinator designated above by the deadline date specified in the Calendar of Events. **Fax or e-mail submissions are not acceptable.**

It is solely the responsibility of each proposer to assure that their proposal is delivered at the specified place and prior to the deadline for submission. Proposals, which for any reason are not so delivered, will not be considered for purposes of this RFP.

3.2 *Determination of Responsibility*

Determination of the proposer's responsibility relating to this RFP shall be made according to the standards set forth in LAC 34: 136. The State must find that the proposer:

- ✓ Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;
- ✓ Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them'
- ✓ Is able to comply with the proposed or required time of delivery or performance schedule;
- ✓ Has a satisfactory record of integrity, judgment, and performance; and
- ✓ Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Proposers should ensure that their proposals contain sufficient information for the state to make its determination by presenting acceptable evidence of the above to perform the services called for by the contract.

3.3 *RFP Addenda*

State reserves the right to change the calendar of events or revise any part of the RFP by issuing an addendum to the RFP at any time.

3.4 *Waiver of Administrative Informalities*

The State reserves the right, at its sole discretion, to waive administrative informalities contained in any proposal.

3.5 *Proposal Rejection*

Issuance of this RFP in no way constitutes a commitment by the State to award a contract. The State reserves the right to accept or reject, in whole or part, all proposals submitted and/or cancel this announcement if it is determined to be in the State's best interest.

3.6 *Withdrawal and Re-submission of Proposal*

A proposer may withdraw a proposal that has been submitted at any time up to the date and time the proposal is due. To accomplish this, a written request signed by the authorized representative of the proposer must be submitted to the RFP Coordinator.

3.7 *Subcontracting Information*

The State shall have a single prime contractor as the result of any contract negotiation, and that prime contractor shall be responsible for all deliverables referenced in the RFP or proposal. This general requirement notwithstanding, proposers may enter into subcontractor arrangements, however should acknowledge in their proposal total responsibility for the entire contract.

If the proposer intends to subcontract for portions of the work, the proposer should include specific designations of the tasks to be performed by the subcontractor. Information required of the proposer under the terms of this RFP is also required for each subcontractor.

Unless provided for in the contract with the State, the prime contractor shall not contract with any other party for furnishing any of the work and professional services herein contracted for without the express written approval of the State.

3.8 *Ownership of Proposal*

All materials submitted in response to this request become the property of State. Selection or rejection of a proposal does not affect this right.

3.9 Proprietary Information

Only information which is in the nature of legitimate trade secrets or non-published financial data may be deemed proprietary or confidential. Any material within a proposal identified as such must be clearly marked in the proposal and will be handled in accordance with the Louisiana Public Record Act, R.S. 44: 1-44 and applicable rules and regulations. Any proposal marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

3.10 Cost of Preparing Proposals

The State is not liable for any costs incurred by prospective proposers prior to issuance of or entering into a contract. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the proposer in responding to this RFP are entirely the responsibility of the proposer, and shall not be reimbursed in any manner by the State of Louisiana.

3.11 Errors and Omissions in Proposal

The State will not be liable for any errors in proposals. The State reserves the right to make corrections or amendments due to errors identified in proposals by State or the proposer. The State, at its option, has the right to request clarification or additional information from the proposers.

3.12 Contract Award and Execution

The State reserves the right to enter into a Contract without further discussion of the proposal submitted based on the initial offer received. The State reserves the right to contract for all or a partial list of services offered in the proposal.

The RFP and proposal of the selected proposer will become part of any contract initiated by the State.

The selected proposer will be expected to enter into a contract which is substantially the same as the sample contract included in Attachment IV. In no event is a Proposer to submit its own standard contract terms and conditions as a response to this RFP. The Proposer should submit with their proposal any exceptions or exact contract deviations that their firm wishes to negotiate. Negotiations may begin with the announcement of the selected proposer.

If the contract negotiation period exceeds fifteen (15) days or if the selected Proposer fails to sign the final contract within fifteen (15) business days of delivery of it, the State may elect to cancel the award and award the contract to the next-highest-ranked Proposer.

3.13 Code of Ethics

Proposers are responsible for determining that there will be no conflict or violation of the Ethics Code if their company is awarded the contract. Ethics issues are interpreted by the Louisiana Board of Ethics.

4.0 RESPONSE INSTRUCTIONS

4.1 Proposal Submission

Proposals must be received on or before 4:00 PM Central Daylight Savings Time on the date specified in the Calendar of Events. Proposers mailing their proposals should allow sufficient mail delivery time to ensure receipt of their proposal by the time specified. The proposal package must be delivered at the proposer's expense to:

Cathy Cutrer
Administrative Manager/Management and Finance
Louisiana Department of Insurance
P.O. Box 94214
Baton Rouge, LA 70804-9214

For courier deliver, the street address is **1702 North 3rd Street, Baton Rouge, LA, 70802** and the telephone number is **225-342-2484**. It is solely the responsibility of each proposer to assure that their proposal is delivered at the specified place and prior to the deadline for submission. Proposals, which for any reason are not received timely, will not be considered.

4.2 Proposal Format

The State requests that three (3) copies of the proposal be submitted to the RFP Coordinator at the address specified. At least 1 copy of the proposal shall contain original signatures; that copy should be clearly marked or differentiated from the other copies of the proposal.

This copy will be retained for incorporation by reference in any contract resulting from this RFP.

The proposal must be signed by those company officials or agents duly authorized to sign proposals or contracts on behalf of the organization. A certified copy of a board resolution granting such authority should be submitted.

4.3 Cover Letter

A cover letter should be submitted on the proposer's official business letterhead explaining the intent of the proposer.

4.4 *Technical and Cost Proposal*

Proposer should submit a proposal as specified in Attachment II which shall include enough information to satisfy evaluators that the Proposer has the appropriate experience, and qualifications to perform the scope of services as described herein. Proposer should respond to all areas requested.

4.5 *Certification Statement*

The proposer must sign and submit the Certification Statement shown in Attachment III.

5.0 EVALUATION AND SELECTION

5.1 *Evaluation Team*

The evaluation of proposals will be accomplished by an evaluation team, to be designated by the State, which will determine the proposal most advantageous to the state.

5.2 *Administrative and Mandatory Screening*

All proposals will be reviewed to determine compliance with administrative and mandatory requirements as specified in the RFP. Proposals found not to be in compliance will be rejected from further consideration.

5.3 *Evaluation and Review*

Proposals that pass the preliminary screening and mandatory requirements review will be evaluated based on information provided in the proposal. The evaluation will be conducted according to the following:

The Evaluation Team will evaluate and score the proposals using the criteria and scoring specified in the following table:

Criteria	Maximum Score
1. Corporate Background/Regulatory experience	40
2. Staff Qualifications	25
3. Cost	35
Total Score	100

Each proposer will receive a cost score computed as follows:

$$CS = (LPC/PC*25)$$

Where: CS = Computed cost score for Proposer
 LPC = Lowest proposed cost of all Proposers

 PC = Proposer's cost

The Evaluation Team will compile the scores and make a recommendation to the head of the agency on the basis of highest score. The award of a contract is subject to the approval of the Division of Administration, Office of Contractual Review.

5.4 Announcement of Contractor

The State will notify the successful proposer and proceed to negotiate terms for final contract. Unsuccessful proposers will be notified in writing accordingly.

6.0 CONTRACTOR REQUIREMENTS

6.1 Corporation Requirements

If the contractor is a corporation not incorporated under the laws of the State of Louisiana, the contractor shall have obtained a certificate of authority pursuant to R. S. 12:301-302 from the Secretary of State of Louisiana before the contract is executed.

If the contractor is a for-profit corporation whose stock is not publicly traded, the contractor shall ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana before the contract is executed.

6.2 Billing and Payment

Contractor should consider all expenses in developing the hourly rate to be charged. There will be no expense reimbursement or payment under this contract.

Contractor must submit invoices monthly, on a form and in a format acceptable to the Department of Insurance.

6.3 Confidentiality

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor

outside the scope of the contract, or is rightfully obtained from third parties.

Under no circumstance is the contractor to discuss and/or release information to the media concerning this project without prior express written approval of the Louisiana Department of Insurance.

ATTACHMENT I: SCOPE OF SERVICES

FUNCTIONAL AND TECHNICAL REQUIREMENTS

1. Overview

To provide support to the Department of Insurance in the identification of insurance companies that may be financially troubled and to initiate corrective action to protect the policyholders, claimants, and creditors from financial loss

2. Tasks and Services

1. Review Companies business operations and financial condition to evaluate and recommend which corrective action or combination of actions might be the most effective for a particular company.
2. Identify causes of underlying troubled company situations.
3. Assist in developing and implementing corrective action plans.
4. Monitor the implementation of corrective action plans.
5. Aid the Department in continuing its fact-finding process. This would include obtaining a more complete understanding of the entities management and developing and analyzing necessary financial information about the company.

3. Deliverables

The contractor will be required to provide bi-monthly status reports. In addition, the contractor will be required to provide written reports and recommendations as required by various projects undertaken.

4. Functional Requirements

- a. Contractor will be required to travel to assignments within the state of Louisiana as well as outside of the state.
- b. With very short notice the contractor may be required to attend special, sometimes unscheduled meetings. The meetings shall usually take place at the Department of Insurance – but may occur at any other location acceptable to the Commissioner of Insurance.

- c. Appearance as an expert witness when required by the Department of Insurance.

5. Project Requirements

- a. Contractor will submit invoices monthly, on a form and in a format acceptable to the Department of Insurance.

ATTACHMENT II: PROPOSAL INFORMATION

All proposals should be formatted as follows:

1. Executive Summary

This section should serve to introduce the purpose and scope of the proposal. It should include administrative information including, at a minimum, response date, proposer contact name and phone number, and the stipulation that the proposal is valid for a time period of 90 days from the date of submission.

It should include a positive statement of compliance with the contract terms. If the proposer cannot comply with any of the contract terms, an explanation of each exception must be supplied. The proposer must address the specific language in Section V and submit whatever exceptions or exact contract modifications that their firm may seek to the sample contract. While final wording will be resolved during contract negotiations, the intent of the provisions will not be substantially altered.

2. Corporate Background and Experience

The proposer should give a brief description of their company including a brief history, corporate structure and organization, number of years in business, and copies of their latest financial statement.

This section should provide a detailed discussion of the proposer's prior experience in working on projects similar in size, scope, and function to the proposed contract. Proposers should describe their experience in other states or in corporate/governmental entities of comparable size and diversity with references from entities including names and telephone numbers of those references. The proposer should describe services provided to regulatory agencies in regards to supervision of companies. Please note: Familiarity with Louisiana Statutes and regulatory experience in Louisiana will be received more favorably.

3. Staff Qualifications

The proposer should provide detailed information about the experience and qualifications of the proposer's assigned personnel considered key to the success of the project.

The proposer should provide resumes for all personnel who will be assigned to perform this contract work. This information should include education, training, technical experience, functional experience, specific dates and names of employers, relevant and related experience, past and present projects with dates and responsibilities and any applicable certifications. This should also specifically include the role and

responsibilities of each person on this project, their planned level of effort, their anticipated duration of involvement, and their on-site availability. Customer references (name, title, company name, address and telephone number) should be provided for the cited projects in the individual resumes. Assigned personnel cannot be replaced without prior approval of the Louisiana Department of Insurance.

4. Cost Information

Using Attachment V, the proposer should provide an hourly rate for year one, year two, and year three of the contract. Cost per hour should represent the **total aggregate cost** that the contractor will bill for each documented hour of legitimate service provided. **This aggregate cost should include, in addition to fees, all contractor's costs (e.g. office overhead, telephone, support staff, travel expenses, etc.)** Contract is for three (3) years; cost per hour for each year must be listed separately.

5. Administrative Information

1. Provide a completed Certification Statement as shown in Attachment III.

ATTACHMENT III: CERTIFICATION STATEMENT

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposals (RFP), including attachments.

OFFICIAL CONTACT. The State requires that the proposer designate one person to receive all documents and the method in which the documents are best delivered. Identify the Contact name and fill in the information below: (Print Clearly):

Date: _____ Official Contact Name: _____

A. E-mail Address: _____

B. Facsimile Number with area code: (____) _____

C. US Mail Address: _____

Proposer certifies that the above information is true and grants permission to the State or Agencies to contact the above named person or otherwise verify the information .

By its submission of this proposal and authorized signature below, proposer certifies that:

- (1) The information contained in its response to this RFP is accurate;
- (2) Proposer accepts the procedures, evaluation criteria, mandatory contract terms and conditions, and all other administrative requirements set forth in this RFP.
- (3) Proposer's quote is valid for at least ninety (90) days from the date of proposer's signature below;
- (4) Proposer understands that if selected as the successful proposer, he/she will have (15) business days from the date of delivery of final contract in which to complete contract negotiations, if any, and execute the final contract document.

Authorized Signature: _____

Typed or Printed Name: _____

Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

SIGNATURE of Proposer's Authorized Representative / DATE

ATTACHMENT IV: CONSULTING SERVICES CONTRACT

STATE OF LOUISIANA CONTRACT

On this ____ day of _____, 20__, the State of Louisiana, [*STATE AGENCY NAME*], hereinafter sometimes referred to as the "State", and [*CONSULTANT'S NAME AND LEGAL ADDRESS INCLUDING ZIP CODE*], hereinafter sometimes referred to as the "Contractor" or "[*CONSULTANT NAME*]", do hereby enter into a contract under the following terms and conditions.

1.0 SCOPE OF SERVICES

1.1 CONCISE DESCRIPTION OF SERVICES

[COMPLETE A BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED]

1.2 STATEMENT OF WORK

1.2.1 INTRODUCTION

This Statement of Work defines the tasks to be performed, the required deliverables, the completion criteria, estimated completion dates, the estimated cost for each Task Schedule; and establishes the responsibilities for accomplishing these tasks.

1.2.2 GOALS AND OBJECTIVES

[THE GOALS AND OBJECTIVES OF THIS CONTRACT]

1.2.3 PERFORMANCE MEASURES

The performance of the contract will be measured by the State Project Manager, authorized on behalf of the State, to evaluate the contractor's performance as against the criteria in the Statement of Work.

[PERFORMANCE SHOULD BE MEASURABLE AND TIME BOUND]

1.2.4 MONITORING PLAN

[Name and Title or Position] will monitor the services provided by the **contractor** and the expenditure of funds under this contract. *[Name and Title or Position]* will be primarily responsible for the day-to-day contact with the **contractor** and day-to-day monitoring of the **contractor's** performance. The monitoring plan is the following:

(MONITORING PLAN)

1.2.5 CONTRACTOR TASKS AND RESPONSIBILITIES

(FULL DESCRIPTION OF SERVICES TO BE PERFORMED COMPOSED FROM THE RFP AND THE PROPOSER'S RESPONSE)

1.2.6 DELIVERABLES

The Contract will be considered complete when Contractor has delivered and State has accepted all deliverables specified in the Statement of Work. Deliverables will be accepted under the provisions of Acceptance of Deliverables.

1.2.7 SUBSTITUTION OF KEY PERSONNEL

The Contractor's personnel assigned to this Contract may not be replaced without the written consent of the State. Such consent shall not be unreasonably withheld or delayed provided an adequately qualified replacement is offered. In the event that any State or Contractor personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this contract, outside of the State's or Contractor's reasonable control, as the case may be, the State or the Contractor, as the case may be, shall be responsible for providing an adequately qualified replacement in time to avoid delays in completing tasks.

2.0 ADMINISTRATIVE REQUIREMENTS

2.1 TERM OF CONTRACT

This contract shall begin on [DATE] and shall end on [DATE]. State has the right to contract for up to a total of three years with the concurrence of the Contractor and all appropriate approvals.

2.2 STATE FURNISHED RESOURCES

State shall appoint *[NAME]* as Project Coordinator for this Contract who will provide oversight of the activities conducted hereunder. Notwithstanding the Contractor's responsibility for management during the performance of this Contract, the assigned Project Coordinator shall be the principal point of contact on behalf of the State and will

be the principal point of contact for Contractor concerning Contractor's performance under this Contract.

2.3 TAXES

Contractor is responsible for payment of all applicable taxes from the funds to be received under this contract. Contractor's federal tax identification number is _____.

3.0 COMPENSATION AND MAXIMUM AMOUNT OF CONTRACT

3.1 PAYMENT TERMS

In consideration of the services required by this contract, State hereby agrees to pay to Contractor a maximum fee of \$/TO BE INSERTED/. Payments are predicated upon successful completion and written approval by the State of the described tasks and deliverables as provided in Section 1.0. Payments will be made to the Contractor after written acceptance by the State of the payment task and approval of an invoice. State will make every reasonable effort to make payments within 25 work days of the approval of invoice and under a valid contract. Payment will be made only on approval of (*Name of Designee*).

During the execution of tasks contained in the Statement of Work, the Contractor may submit invoices, not more frequently than monthly. The payment terms are as follows:

(ENTER THE NEGOTIATED HOURLY RATES OR PAYMENT TERMS)

Such payment amounts for work performed must be based on at least equivalent services rendered, and to the extent practical, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices. Contractor will not be paid more than the maximum amount of the contract.

4.0 TERMINATION

4.1 TERMINATION FOR CAUSE

State may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract; provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice. Failure to perform within the time specified in the solicitation will constitute a default and may cause cancellation of the contract. Where the State has determined the Contractor to be in default, the State reserves the right to obtain any or all products or services covered by the contract on the open market and to charge the contractor with cost in excess of the contract price. Until such

assessed charges have been paid, no subsequent proposal from the defaulting contractor will be considered.

Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract provided that the Contractor shall give the State written notice specifying the State agency's failure and a reasonable opportunity for the state to cure the defect.

4.2 TERMINATION FOR CONVENIENCE

State may terminate the Contract at any time without penalty by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date. Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

4.3 TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

5.0 INDEMNIFICATION & LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that

the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

6.0 CONTRACT CONTROVERSIES

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statute 39:1524-26.

7.0 FUND USE

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

8.0 ASSIGNMENT

No contractor shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning to a bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

9.0 RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of the last payment made under this contract. Records shall be made available during normal working hours for this purpose.

10.0 CONTRACT MODIFICATION

No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

11.0 CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the

intent of this paragraph. The contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of the contract, or is rightfully obtained from third parties.

12.0 SUBCONTRACTORS

The Contractor may, with prior written permission from the State, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties.

13.0 COMPLIANCE WITH CIVIL RIGHTS LAWS

The contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

14.0 INSURANCE

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana state agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-contractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the

subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either or them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Insurance Covering Special Hazards: Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

15.0 APPLICABLE LAW

This contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

16.0 CODE OF ETHICS

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the Performance of services called for in this contract. The contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

17.0 SEVERABILITY

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

18.0 COMPLETE CONTRACT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

19.0 ORDER OF PRECEDENCE

This contract shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the contract, excluding the Request for Proposals, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Proposals and its amendments; and third priority shall be given to the provisions of the Proposal.

THUS DONE AND SIGNED on the date(s) noted below:

CONTRACTOR'S SIGNATURE

STATE'S SIGNATURE

DATE

DATE

ATTACHMENT V

COST SHEET

Hourly rate, first year:_____

Hourly rate, second year:_____

Hourly rate, third year:_____